SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 588

FRED F. EDWARDS,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE SUPERIOR COURT OF THE COUNTY OF YUBA, STATE OF CALIFORNIA.

STATEMENT AS TO JURISDICTION.

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INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Opinion below	1
Jurisdiction	2
Statutory provisions sustaining jurisdiction	2
State statute drawn in question and decision as to its validity	2
Finality of judgment	3
Judgment of the highest court	3
Appeal timely taken	4
Constitutional questions timely and sufficiently raised	4
Nature of the case	5
Exhibit "A"—Opinion of the Superior Court	11

Table of Cases Cited.

Allgeyer v. *Louisiana*, 165 U. S. 578	7
Baldwin v. *Seelig*, 294 U. S. 511	8
Berkeley v. *Cunnyngham*, 218 Cal. 714	3
Caminetti v. *U. S.*, 242 U. S. 470	8
City of Bangor v. *Smith*, 83 Me. 422, 22 Atl. 379	8
County of Mobile v. *Kimball*, 102 U. S. 691	8
Crandall v. *Nevada*, 6 Wall. 35	7
De Jonge v. *Oregon*, 299 U. S. 353	8
Gibbons v. *Ogden*, 9 Wheat. 1	8
Gloucester v. *Pennsylvania*, 114 U. S. 196	8
Gooch v. *U. S.*, 297 U. S. 124	8
Hague v. *C. I. O.*, 307 U. S. 496	9
Helson v. *Kentucky*, 271 U. S. 245	8
Hoke v. *U. S.*, 227 U. S. 308	8
Johnston v. *Wolf*, 208 Cal. 286	3
Lottery Cases, 188 U. S. 321	8
Lovell v. *Griffin*, 303 U. S. 444	9
McLean v. *Freiberger*, 215 Cal. 1	3

Mayor v. *McNeeley*, 274 U. S. 676 8
Meyer v. *Nebraska*, 262 U. S. 390 7
Slaughter-House Cases, 16 Wall. 36 7
Twining v. *New Jersey*, 211 U. S. 78 6
United States v. *Burch*, 226 Fed. 974 8
Williams v. *Fears*, 179 U. S. 270 7

STATUTES CITED.

Constitution of the United States:
Article I, Sec. 8, Subd. 3 2
Article IV, Sec. 2, Subd. 1 7, 9
14th Amendment 2, 7, 9
Judicial Code, Section 237a and 237b, as amended by the Acts of January 31, 1928, April 26, 1928 and February 13, 1925 .. 2, 3
Penal Code of California:
Sec. 1425 .. 3
Sec. 1466 .. 3
Statutes of California, Chapters 369 and 464 .. 3
Welfare and Institutions Code of the State of California, Sec. 2615 .. 2

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STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 of this Court, the appellant herewith submits his statement showing that the appeal in the above-entitled cause is properly before this Court.

Opinion Below.

The opinion of the Superior Court of the State of California, in and for the County of Yuba, is not officially reported. A copy of the memorandum of opinion of the Superior Court is attached hereto as Exhibit "A".

Jurisdiction.

(1) Statutory Provisions Sustaining Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 (a) and Section 237 (b) of the Judicial Code of the United States, as amended by the Acts of February 13, 1925, January 31, 1928, and April 26, 1928.

(2) State Statute Drawn Into Question and Decision as to Its Validity.

The appellant contended in the court below that Section 2615 of the Welfare and Institutions Code of the State of California (under which statute the appellant was charged and for a violation of which he was convicted) was repugnant to the Constitution of the United States in that, on its face and as applied to and enforced against the appellant, said statute in contravention of the Constitution of the United States and the Fourteenth Amendment thereto, deprived him of his liberty and property without due process of law, abridged his privileges or immunities as a citizen of the United States and denied him the equal protection of the laws. He further contended that said statute is repugnant to Article I, Section 8, Subdivision 3, of the Constitution of the United States in that it is an attempt by the State of California to regulate commerce among the several States.

The decision of the court below was in favor of the validity of said statute.

The statute, in its entirety, reads as follows:

> "*Section 2615:* Wilful Act a Misdemeanor. Every person, firm or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor (1927)."

This statute was enacted by the Legislature of the State of California in Chapters 369 and 464, Statutes of California, on June 21, 1937.

(3) Finality of Judgment.

The judgment forming the basis of the appeal herein is final both in form and in substance, and disposes of all the elements of the controversy in the court below. The judgment affirms the legality of the conviction of appellant, and upholds the sentence imposed on appellant of six months in jail.

(4) Judgment of the Highest Court.

The judgment of the Superior Court of the State of California, in and for the County of Yuba, is that of the highest court in which, under the laws of the State of California, such judgment could be had in the case, and constitutes a final judgment of said court, within the meaning of Section 237 (a) of the Judicial Code (28 U. S. C. A. Section 344).

This case originated as a criminal prosecution against the appellant, in the Justice's Court of Marysville Township, County of Yuba, State of California. The said statute under which the appellant was charged, and for a violation of which he was convicted, provides by its terms that any person violating any provision of said statute shall be deemed guilty of a misdemeanor.

Under the provisions of Section 1425 of the Penal Code of the State of California, jurisdiction for the prosecution of misdemeanor is lodged in the Justice's Court. Under Section 1466 of said Penal Code, an appeal from the Justice's Court lies to the Superior Court.

The California courts have ruled that no appeal or review will lie from a decision by the Superior Court reviewing a decision of a Justice's Court.

Berkeley v. *Cunnyngham*, 218 Cal. 714:
McLean v. *Freiberger*, 215 Cal. 1;
Johnston v. *Wolf*, 208 Cal. 286.

(5) Appeal Timely Taken.

The judgment on appeal by the Superior Court from which this appeal is taken, was entered on the 26th day of June, 1940. On the 21st day of September, 1940, the appellant filed with said Superior Court his petition for appeal, accompanied by his assignment of errors and the within "Statement as to Jurisdiction." On the 21st day of September, 1940, the Honorable Warren Steel, Judge of the said Superior Court, made and entered his order allowing the within appeal to the Supreme Court of the United States.

(6) Constitutional Question Timely and Sufficiently Raised.

The appellant has asserted consistently in the courts below the claim that the statute under which he was charged, and for a violation of which he was convicted, offends against constitutional liberty in that it denies him freedom of speech, press, movement, residence, denies him the equal protection of the laws, deprives him of liberty and property without due process, abridges his privileges or immunities as a United States citizen and further, is an attempt to regulate interstate commerce, all in violation of the Constitution of the United States.

The constitutional question was first raised by demurrer to the complaint which was urged on the occasion of appellant's first appearance before the trial court. (Clerk's transcript, page —.) This plea was filed by the appellant prior to the introduction of any evidence. Said demurrer was overruled and appellant entered his plea of not guilty. The facts in the case were not in dispute and were stipulated to by appellant and appellee in the trial court.

The appellant appealed from the sentence of the Justice's Court to the Superior Court, raising anew the same

Federal constitutional issues. (Clerk's transcript, page ——.)

The Superior Court, after expressly considering these constitutional objections which were argued at length in briefs filed on behalf of the appellant, rejected the objections and upheld the statute in its entirety, though urging that the matter, in view of its public importance, should be finally settled by a higher court.

(7) Nature of the Case.

The facts in the case are not in dispute. In the statement on appeal to the Superior Court, it was stipulated between the parties hereto that the facts involved in this case were as follows:

> "The Appellant, Fred F. Edwards, a citizen of the United States and a resident of the State of California, left Marysville, California, on December 21, 1939, for Spur, Texas. The object of this trip was to bring his wife's brother, Frank Duncan, a citizen of the United States and Texas, back to Marysville. Appellant arrived at Spur, Texas, on December 24, 1939, and learned that Duncan then had no job and had last been employed by the W. P. A. Appellant at that time learned that Duncan was an indigent person and at all times mentioned herein, appellant knew Duncan to be indigent. It was agreed between Duncan and appellant that appellant would drive Duncan from Spur, Texas, to Marysville, California, in appellant's car. Appellant and Duncan left Spur, Texas, on January 1, 1940, entered California from Yuma, Arizona, on January 3, 1940, and arrived in Marysville on January 5, 1940. At the time Duncan arrived in Marysville he was without funds and lived at appellant's home until he was given assistance by the Farm Security Administration about ten days after his arrival in Marysville. Duncan had no employment after his arrival in California, until after he was given assistance by the

Farm Security Administration. Duncan had about twenty dollars ($20.00) when he left Spur, Texas; this money was all spent before his arrival at Marysville."

The Federal Constitutional Questions Involved are Substantial and a Decision is Necessary to Settle a Federal Question not heretofore Determined by this Court.

The questions involved in this case are whether a State may, consistent with the United States Constitution, under the guise of an indigency law:

(a) Make it a crime for one to assist an indigent person in the exercise of the latter's constitutional rights or privileges.

(b) Regulate commerce among the several States.

(c) Deny one bringing or assisting in bringing an indigent person into California due process and the equal protection of the laws by making that act a crime when the entrance into California by the indigent is no crime under any California statute.

(d) Abridge one's privileges or immunities as a United States citizen by criminally penalizing his movement from State to State.

(e) Deprive one of due process by criminally penalizing his freedom of speech, press and movement and by making an act innocent in nature and character a crime.

A. An indigent person has a constitutional right or privilege to enter California. The basic privileges of citizens of the United States are those which 'arise out of the nature and essential character of the national government' and 'among the rights and privileges of national citizenship * * * are the right to pass freely from State to State.' *Twining* v. *New Jersey*, 211 U. S. 78, 97.

See also:
U. S. Constitution, Article IV, Section 2;
Crandall v. *Nevada*, 6 Wall. 35, 48-9;
The Slaughter-House Cases, 16 Wall. 36;
Williams v. *Fears*, 179 U. S. 270.

Liberty under the Fourteenth Amendment includes freedom of movement and residence, and the right to work where one wills.

> "The liberty mentioned in that amendment (the 14th) means * * * the right of the citizen * * * to live and work where he will * * *."
> *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589.

See also:
Meyer v. *Nebraska*, 262 U. S. 390, 399.

Freedom of movement from place to place and freedom of residence is basic not only in the due process portion of Section I of the Fourteenth Amendment but in that portion of the same Section which provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The foregoing not only defines the rights of citizens remaining within the confines of one State but it gives them the right to leave that State, move to another and become citizens of the last.

> "* * * a citizen of the United States can, of his own volition, become a citizen of any State of the Union, by a bona fide residence therein, with the same rights as other citizens of that State."
> *The Slaughter-House Cases*, 16 Wall. 36, 80.

The movement of an indigent person into California and his residence there cannot be prescribed. He has a consti-

tutional right and privilege to enter California. The appellant, therefore, cannot be punished for the alleged crime of assisting him in the exercise of that constitutional right and privilege. *De Jonge* v. *Oregon*, 299 U. S. 353.

B. The statute contravenes the power of the Federal government to regulate interstate commerce. The carriage of persons from one State to another is interstate commerce whether it be free or for hire. *Gibbons* v. *Ogden*, 9 Wheaton 1; *Caminetti* v. *U. S.*, 242 U. S. 470; *U. S.* v. *Burch*, 226 Fed. 974; *Gooch* v. *U. S.*, 297 U. S. 124. The migration of persons across State lines has had constitutional support from the first. *Gibbons* v. *Ogden*, 9 Wheaton 1.

The effect of this statute is to penalize immigration into California, not by penalizing the immigrant but the one who brings him. And the standard of guilt is the economic condition of the immigrant and the knowledge of that condition by the carrier. A carrier who brings into the State a person who later becomes indigent cannot be compelled to remove him. *City of Bangor* v. *Smith*, 83 Me. 422, 22 Atl. 379. Nor may he constitutionally be held guilty of a crime in bringing him within the State. Economic insulation of geographical or political areas can have no constitutional sanction within the framework of a national government.

Baldwin v. *Seelig*, 294 U. S. 511, 523.

The transit and movement of persons across State boundaries is subject to the regulation of the Federal government under its power over interstate commerce and no State may constitutionally encroach on that power in that field.

County of Mobile v. *Kimball*, 102 U. S. 691;
Gloucester v. *Pennsylvania*, 114 U. S. 196;
The Lottery Cases, 188 U. S. 321;
Hoke v. *U. S.*, 227 U. S. 308;
Caminetti v. *U. S.*, 242 U. S. 470;
Mayor v. *McNeeley*, 274 U. S. 676;
Helson v. *Kentucky*, 271 U. S. 245.

C. It is no violation of law under the California statutes for an indigent to enter the State. But the statute in question makes it a crime to aid an indigent person to come into the State. Certainly a statute which, in substance, renders a person an accessory to a crime when in fact the act of the principal is not made a crime, denies due process and the equal protection of the laws. One who assists another in the exercise of a constitutional right cannot on that account be branded a criminal. *De Jonge* v. *Oregon, supra.*

D. The appellant is a citizen of the United States. As a citizen of the United States he has the privilege or immunity of moving freely from one State to another. *Twining* v. *New Jersey, Crandall* v. *Nevada, Williams* v. *Fears,* and *Allgeyer* v. *Louisiana, supra.* The statute in question abridges that privilege or immunity by making such movement criminally punishable when it is in furtherance of the entrance of an indigent person into California; and it thereby raises a Federal question under the Fourteenth Amendment, and also under Article IV, Section 2, Subdivision 1, of the U. S. Constitution.

E. The statute, by fair definition of its terms, prohibits one from encouraging a person whom one knows to be indigent to enter the State. "Bring", among other definitions, means to "cause to come" and "to cause to pass from a place into another". Spoken or written words addressed to a known indigent person which result in inducing him to come to California constitute a crime under the terms of the statute, which would seem to render the statute void, as abridging the liberties of speech and press in violation of the Fourteenth Amendment.

Lovell v. *Griffin,* 303 U. S. 444;
Hague v. *C. I. O.,* 307 U. S. 496.

Not only is a Federal question raised with respect to the denial of freedom of speech and press by this statute but it is also raised by the denial of due process to the appel-

lant in criminally penalizing his movement from one State into another when such movement is under the circumstances of the instant case.

In addition, the act with which appellant was charged cannot constitute a crime. The statute ignores motive, purpose, or intent. It is arbitrary and unreasonable in that an act, innocent in nature and character is made a crime. Nor can statutory fiat create a crime from the act of assisting another in the exercise of the latter's constitutional rights. *De Jonge* v. *Oregon, supra.* The Federal question is thus raised of the denial to appellant of due process and equal protection of the laws.

California obviously seeks here to prevent indirectly what it cannot prevent directly; it attempts to prevent indigent persons from taking up residence in California by intimidating those who would assist them. There can be no legal objection to a reasonable requirement of a fixed period of residence within the State as a pre-requisite to eligibility for relief. That State may not, however, bar one whom it may consider a potential relief recipient from entrance; and similarly it may not make him who aids his entrance a criminal. This case presents a question which affects a most basic of American rights; the right of American citizens to move without let or hindrance throughout the country. So peculiarly national a question calls for determination by the one court which speaks not for one State or section but for the whole country.

Conclusion.

Wherefore, it is respectfully submitted that the appellant in the above entitled cause comes properly within the jurisdiction of this Court.

Samuel Slaff,
Philip Adams,
Wayne M. Collins,
Attorneys for Appellant.

EXHIBIT "A".

Opinion Delivered by Superior Court of the State of California, in and for the County of Yuba, Upon Rendering of Judgment of June 26, 1940.

No. 621.

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff and Respondent,*

vs.

FRED F. EDWARDS, *Defendant and Appellant.*

MEMO. OPINION.

The defendant and appellant herein was convicted in the Justice Court of a misdemeanor, to wit: a violation of Section 2615 of The Welfare and Institutions Code of this State which reads as follows:

"2615. Willful act a misdemeanor. Every person, firm, or corporation or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor."

The case is before this Court on a stipulation of facts and the question presented the validity of the statute under which the defendant was adjudged guilty.

The issue as to the constitutionality of this statute has been exhaustively argued in the briefs filed, including briefs of amicus curiae, and it appears that the higher courts have not as yet had occasion to pass upon such a statute as the one here involved. In the numerous decisions cited, dicta is to be found which strongly suggests that such legislation may be violative of the Privileges and Immunities clause of the 14th Amendment in restricting the right of citizens to pass freely from state to state as well as violative of other provisions of the United States Constitution and the California Constitution.

The Court regards the question as closed and in view of that, as a trial court, it is constrained to uphold the statute as a valid exercise of the Police Power of the State of California.

The question is of importance to the public, considering times and conditions, and should be finally settled by the higher courts. The present holding of this Court makes possible a further appeal to and review by the courts of higher jurisdiction.

The judgment will therefore be affirmed and it is so ordered.

(Signed) WARREN STEEL,
Judge.

Dated: June 24th, 1940.

(Endorsed) Statement as to Jurisdiction. Filed Sep. 21, 1940. W. M. Strief, Clerk, by A. Conley, Deputy Clerk.